
From: Xidis, Claire [cxidis@motleyrice.com]
Sent: Tuesday, August 19, 2008 4:29 PM
To: George, Robert; David Page; David Riggs; Richard Garren; Bob Nance; Louis Bullock; Bob Blakemore; Kelly Burch; Trevor.Hammons@oag.ok.gov; Daniel Lennington; Baker, Fred; Ward, Liza
Cc: J Jorgensen; Burns, Bryan; Mark_Quayle@cargill.com; James Graves; jgriffin@lathropgage.com; Gary Weeks; rredemann@pmrlaw.net; vbronson@cwlaw.com; bfreeman@cwlaw.com; Ehrich, Delmar R.; jelrod@cwlaw.com; rfunk@cwlaw.com; thill@rhodesokla.com; Jones, Tim; Bond, Michael R.; rsanders@youngwilliams.com; Terry@thewestlawfirm.com; jtucker@rhodesokla.com; vmorgan@cwlaw.com; lphillips@cwlaw.com; Sperrazza, Quynh C.; lwhite@rhodesokla.com; gbarber@rhodesokla.com; Lawrence Zeringue; pthompson@bassettlawfirm.com; Dolan, Christopher H.; Rockwood, Linda L.; Jones, Bruce; Nicole Longwell; Jinger Waller; Carney, Kristen Shults; Jinger Waller; Kleibacker Lee, Krisann C.; Craig A. Mirkes; ljsoutherland@rhodesokla.com; Patrick Ryan; Philip Hixon; Kleibacker Lee, Krisann C.; wbassett@bassettlawfirm.com; Sherry Bartley; Scott McDaniel
Subject: RE: Oklahoma v. Tyson

Robert -

In response to your inquiries below, the State's responses to the first and second questions are "no."

E. Claire Xidis | Attorney at Law | Motley Rice LLC
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-----Original Message-----

From: George, Robert [mailto:Robert.George@tyson.com]
Sent: Monday, August 18, 2008 5:53 PM
To: Xidis, Claire; David Page
Cc: J Jorgensen; Burns, Bryan; Mark_Quayle@cargill.com; James Graves; jgriffin@lathropgage.com; Gary Weeks; rredemann@pmrlaw.net; vbronson@cwlaw.com; bfreeman@cwlaw.com; dehrich@faegre.com; jelrod@cwlaw.com; rfunk@cwlaw.com; thill@rhodesokla.com; Jones, Tim; Bond, Michael R.; rsanders@youngwilliams.com; Terry@thewestlawfirm.com; jtucker@rhodesokla.com; vmorgan@cwlaw.com; lphillips@cwlaw.com; Sperrazza, Quynh C.; lwhite@rhodesokla.com; gbarber@rhodesokla.com; Lawrence Zeringue; pthompson@bassettlawfirm.com; Dolan, Christopher H.; lockwood@faegre.com; Jones, Bruce; Nicole Longwell; Jinger Waller; kcarney@faegre.com; Jinger Waller; kkleef@faegre.com; Craig A. Mirkes; ljsoutherland@rhodesokla.com; Patrick Ryan; Philip Hixon; kkleef@faegre.com; wbassett@bassettlawfirm.com; Sherry Bartley; Scott McDaniel
Subject: RE: Oklahoma v. Tyson

Claire,

Thank you for the prompt response. If you could answer the following two questions, it would assist the defendants in determining how best to proceed from here:

- 1) Are you representing that all the changes and additions in the errata reports for the State's experts are the product of newly discovered information which was not in existence or reasonably available to the State's experts at the time they submitted their expert reports?
- 2) Does the State interpret Rule 26(e) as granting the State's experts an unlimited license to continue between now and the pre-trial disclosure deadline to collect additional data, complete new analysis and run additional modeling scenarios and modify their opinions based upon that work?

-----Original Message-----

From: Xidis, Claire [mailto:cxidis@motleyrice.com]
Sent: Monday, August 18, 2008 3:59 PM
To: George, Robert; David Page
Cc: J Jorgensen; Burns, Bryan; Mark_Quayle@cargill.com; James Graves; jgriffin@lathropgpage.com; Gary Weeks; rredemann@pmrlaw.net; vbronson@cwlaw.com; bfreeman@cwlaw.com; dehrich@faegre.com; jelrod@cwlaw.com; rfunk@cwlaw.com; thill@rhodesokla.com; Jones, Tim; Bond, Michael R.; rsanders@youngwilliams.com; Terry@thewestlawfirm.com; jtucker@rhodesokla.com; vmorgan@cwlaw.com; lphillips@cwlaw.com; Sperrazza, Quynh C.; lwhite@rhodesokla.com; gbarber@rhodesokla.com; Lawrence Zeringue; pthompson@bassetlawfirm.com; Dolan, Christopher H.; lrockwood@faegre.com; Jones, Bruce; Nicole Longwell; Jinger Waller; kcarney@faegre.com; Jinger Waller; kkleee@faegre.com; Craig A. Mirkes; ljsoutherland@rhodesokla.com; Patrick Ryan; Philip Hixon; kkleee@faegre.com; wbassett@bassetlawfirm.com; Sherry Bartley; Scott McDaniel
Subject: RE: Oklahoma v. Tyson

Robert,

In response to your email of August 15, 2008, the State has an ongoing duty to supplement expert disclosures pursuant to Rule 26(e). In addition, the State has a right to supplement expert disclosures where additional data has become available which impacts expert witnesses' opinions. Thus, the State does not find your proposal for a written agreement useful or necessary or supported by the Rules, and declines your invitation to enter such an agreement. If you have any alternative "practical solutions," we would be happy to discuss other possibilities with you which acknowledge and incorporate the requirements and rights of the Rules.

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-----Original Message-----

From: George, Robert [mailto:Robert.George@tyson.com]
Sent: Friday, August 15, 2008 2:44 PM
To: David Page; Xidis, Claire
Cc: J Jorgensen; Burns, Bryan; Mark_Quayle@cargill.com; James Graves; jgriffin@lathropgpage.com; Gary Weeks; rredemann@pmrlaw.net; vbronson@cwlaw.com; bfreeman@cwlaw.com; dehrich@faegre.com; jelrod@cwlaw.com; rfunk@cwlaw.com; thill@rhodesokla.com; Jones, Tim; Bond, Michael R.; rsanders@youngwilliams.com; Terry@thewestlawfirm.com; jtucker@rhodesokla.com; vmorgan@cwlaw.com; lphillips@cwlaw.com; Sperrazza, Quynh C.; lwhite@rhodesokla.com; gbarber@rhodesokla.com; Lawrence Zeringue; pthompson@bassetlawfirm.com; Dolan, Christopher H.; lrockwood@faegre.com; Jones, Bruce; Nicole Longwell; Jinger Waller; kcarney@faegre.com; Jinger Waller; kkleee@faegre.com; Craig A. Mirkes; ljsoutherland@rhodesokla.com; Patrick Ryan; Philip Hixon; kkleee@faegre.com; wbassett@bassetlawfirm.com; Sherry Bartley; Scott McDaniel
Subject: FW: Oklahoma v. Tyson

David,

I write on behalf of all defendants in an effort to reach an agreement on matters pertaining to supplemental expert reports and the supplementation of considered materials and environmental sampling data. On numerous occasions after the deadline for Rule 26 expert disclosures established by the Court in its Amended Scheduling Order, and as recently as this week, Plaintiffs experts have attempted to supplement or change the expert opinions in their reports through the submission of multiple page errata reports. Defendants view these errata as supplemental expert reports that affect substantive changes to the experts' opinions. Obviously, Defendants are concerned about and prejudiced by Plaintiffs' continual modification and supplementation of expert reports that our experts are working on rebutting. Defendants are also concerned about the continual supplementation of considered materials and the continual production of environmental data collected by Plaintiffs' experts for this litigation. Such materials and data could only be admitted at trial through an expert witness that has considered those materials and data as part of the formulation of his or her opinions. The deadline for

Plaintiffs to produce materials and data considered by all experts other than those exclusively evaluating monetary damages has passed.

Defendants' ability to defend this case and the ability of our experts to prepare timely rebuttal reports is being prejudiced by Plaintiffs' refusal to abide by the expert disclosure deadlines in the amended scheduling order. Defendants could bring these matters to the attention of the Court but would prefer to work out a practical solution that protects the interests of all parties. Please confirm Plaintiffs' agreement that, after the date of this e mail, plaintiffs will seek express leave of the Court before serving any additional errata to expert reports, supplemental expert reports, supplemental productions of considered materials or supplemental productions of environmental data collected or analyzed by Plaintiffs' experts whose reports were due in June or July 2008. In offering this proposal, Defendants seek to solve the future problem of Plaintiffs' continued late disclosure of expert opinions and materials. However, Defendants do not waive their right to seek relief for Plaintiffs' past violations of the Amended Scheduling Order.

If I do not have your agreement to this proposal in writing by the close of business on Monday, August 18th, I will assume that Plaintiffs will not agree to the terms of this e mail and Defendants will seek relief from the Court. I look forward to your response and truly hope that we avoid having to burden the Court with this dispute.

Robert W. George
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